

# Seattle's Shorelines Today and Tomorrow: Updating Seattle's Shoreline Master Program

Citizens Advisory Committee

Tuesday, February 24, 2009; 6:00 pm - 9:00 pm

Conference Room 4080, Seattle Municipal Tower, Fifth and Columbia

## MEETING SUMMARY

*Prepared by Triangle Associates, Inc.*

### Attendance

Seattle Shoreline Master Program Update Citizen Advisory Committee			
Last	First	Seat	In Attendance?
Allison	Bob	Residential Shoreline Property Owner	✓
Arntz	Jan	University of Washington	✓
Ashley	Gregory	Aquatic Permittees/Contractors	✓
Bowman	Bob	Floating Homes	✓
Ferguson	Jim	Marine Indust. Bus.: Lake Union/Ship Canal	Eugene Wasserman
Hanson	Eric	Port of Seattle	✓
Johnson	Mark	Seattle Planning Commission	✓
Lockwood, USCG, Ret	John W.	Marine Industrial Business: Duwamish	✓
McCullough	Jack	Business: Central Waterfront	✓
Nelson	Kitty	Environmental: Lk WA and Ship Canal	✓
Nelson, Jr.	Martin O.	Commercial	✓
O'Halloran	Vince	Labor	✓
Oppenheimer	Martin	Recreation/Public Access	✓
Owen	John W.	Citizen At-Large	☐
Preisler	Sarah	Citizen At-Large	✓
Rasmussen	James	Environmental: Duwamish	☐
Stabbert	Brooke	Non-Residential Shoreline Property Owner	✓
Trim	Heather	Environmental: Puget Sound	✓
Tu	Trang	Citizen At-Large	✓
Whittaker	Gregory	Recreation/Public Access	☐

Project Team/Presenters/Other Department of Planning and Development (DPD)			
Last	First	Organization	In Attendance?
Gainer	Cole	Triangle Associates	✓
Glowacki	Maggie	Seattle DPD	✓
Kern	Michael	Triangle Associates	✓
LaClergue	Dave	Seattle DPD	✓
Robison	Dave	Cascadia Community Planning Services	☐
Skelton	John	Seattle DPD	✓
Staley	Brennon	Seattle DPD	✓

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<b>General Public</b>			
<b>Last</b>	<b>First</b>	<b>Organization</b>	<b>In Attendance?</b>
Burcar	Joe	Department of Ecology	✓
Dufour	Roxie	Homeowner	✓
Durand	Chad	Durand Environmental	✓
Farr	Ann	Port of Seattle Consultant	✓
Forman	Diana	Portage Bay Coalition for Clean Water	✓
Keasler	Bill	Floating Homes	✓
Lagerberg	Eric	Homeowner	✓
Page	Heather	WSDOT Consultant (Anchor Environmental)	✓

### **Meeting Purpose**

This was the eighth meeting of the City of Seattle's Shoreline Master Program (SMP) Update Citizens Advisory Committee (Committee). The meeting included presentations and discussion on: 1) Urban Stable Environment, 2) Non-Conforming Structures and Uses, and 3) the Committee work plan, process and options for writing the Committee report.

### **Welcome and Introductions**

Facilitator Michael Kern of Triangle Associates welcomed the Committee and public to the meeting and led a round of introductions. Michael reviewed the meeting materials and agenda and pointed out intervals for public comment. He asked the Committee for comments on January's meeting summary, which was then approved by the Committee for posting to DPD's SMP Update website. The Committee then agreed to the posting of future meeting summaries via email, if no comments are received by a given deadline, prior to a following meeting.

### **Urban Stable/Mixed-Use Environment**

Brennon Staley of DPD presented an overview on DPD's current regulations and proposed changes to the Urban Stable (US) environment, which DPD proposes to rename as the Urban Mixed-Use (UMX) environment (see PowerPoint presentation and related handouts for the August 26, 2008 meeting, available from the Committee's website). Brennon said that DPD is proposing a revision to the US/UMX purpose statement that would read as follows: *"to provide for a mix of water-oriented uses and to allow limited non-water-oriented development where it does not displace water-oriented uses and where it provides opportunities for public access, ecological function, and recreational enjoyment of the shoreline."*

DPD is proposing the following changes to regulations in the US/UMX environment:

- Continue to allow residential, office, and mixed non-water-dependent commercial on the dry land portion of waterfront lots in limited quantity or where substantial public access or amenities are provided; use existing provision with following changes:
  - a. Make "major public access occupying 1/3 of site" the first priority and only allow alternative on smaller sites or where it would interfere with a water-dependent use.
  - b. Allow counting of vegetated buffer toward major public access requirement.

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- c. Apply existing commercial use floor area ratio (FAR) & parking limits to residential uses as well.
- d. Increase minimum percent water dependent use on a lot from 40% to 50%, to avoid public access requirements.
- Allow certain “water-enjoyment uses” over water in existing buildings. Continue to allow non-water-dependent marine retail sales and service and restaurants, but limit general sales and service, custom craft, and entertainment uses to water-related uses only.
- Allow residential, office, and non-water-dependent commercial outright on upland lots.
- Establish a 15’ buffer (with landscaping standards), plus an additional building setback of 20’.
  - a. Development in the buffer would be prohibited, excluding water access.
  - b. No buildings would be allowed in setback, but limited development would be allowed for low-intensity uses;
- For small lots where reasonable use would be denied if a property owner was required to accommodate setbacks a reduction of building setback would be allowed.
- Change major durable retail sales from a conditional use to a prohibited use on waterfront lots.
- Define Lake Union as areas between Fremont Bridge and University Bridge.

Key questions that DPD provided for discussion included:

- How can we accommodate a reasonable mix of uses without precluding water-dependent uses?
- Are requirements for lots with substantial non-water-dependent uses achieving our public access goals?
- How should ecological goals be included?
- Is the approach proposed by DPD and/or the Committee consistent with the Committee’s and community’s vision for Seattle’s shorelines?

Committee member comments and concerns are identified as “*Comment*” or “*Concern*” while DPD clarifications are identified as “*DPD*”, below:

*DPD:* Examples of over-water uses that would no longer be allowed under these proposals are hair salons, jewelry stands and pinball arcades. Restaurants would be allowed, because they facilitate the enjoyment of the water.

*Comment:* In today’s economic environment, requiring water dependent uses along the shoreline is restricting and hurting shoreline property owners.

*DPD:* Existing overwater non-water dependent uses could be continued but not expanded.

*DPD:* An upland lot is one within 200’ of the water and on the other side of the road.

*DPD:* The Cheshiaud trail is a mixed, multi-purpose trail being developed around Lake Union. DPD is considering allowing property owners the option of paying for development of the trail, rather than accommodating public access on their site. DPD still has to develop the list of potential projects one

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could pay into.

*Comment:* Allowing people to pay into a fund for a trail is allowing offsite mitigation, which is not as favorable as onsite mitigation.

*DPD:* The buffer and setback would be measured from the ordinary high water mark and would end where the overhang of a building begins.

*DPD:* A structure that is on the bulkhead today would become a non-conforming structure.

*DPD:* A small lot (where the setback could be reduced) might be defined as a lot with a depth of less than 50' of dry land, but this still needs to be determined.

*DPD:* Allowing ecological improvement for non-water dependent uses in the US/UMX environment would be a trade off for the non-water dependent uses, not for public access.

*Comment:* DPD should write the code in such a way that owners of small lots in US/UMX do not have to request a variance in order to avoid the public access requirement.

*Concern:* Requiring public access for multi-family houses on the shoreline punishes density, which the City is trying to promote in other initiatives.

*DPD:* Single family homes are listed as a preferred use on the shoreline under the Shoreline Management Act (SMA). Multi-family homes are not.

*DPD:* Mixed use projects have been successful in the South Lake Union area.

*DPD:* The increase to 50% of a water dependent use on a dry land waterfront lot is not retroactive. It would only apply if an applicant changed use or redeveloped a project site.

*Comment:* Consider making existing buildings exempt from the requirement of 50% of a water related use, especially in these economic times. Some existing buildings are multilevel with more space than 10,000' and should be able to host non-water dependent uses without becoming a non-conforming structure.

*Comment:* These proposals are not trying to hurt property owners. Economic times go up and down; land use code should not be written only to address short-term economics. Most of the US/UMX shoreline is already built out. Property owners should be able to change the use without a lot of renovation.

*DPD:* What constitutes "reasonable use" of a property is determined by DPD via a economic and zoning analysis.

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*Comment:* Consider adding lodging as an overwater conditional use.

*Concern:* DPD needs a way to ensure that a property stays the way a project proponent claims it will be used.

*DPD:* Compliance to use standards is complaint based; DPD's action occurs upon receiving a complaint.

*Comment:* There should be a safeguard, penalties and a timeline for enforcing uses.

*DPD:* For the vegetated buffer requirement, DPD envisions a vegetated strip (landscaping) behind the bulkhead, which would not require removal of the bulkhead. This requirement would be for mitigation for site redevelopment. DPD has not developed specific landscaping requirements for this buffer, but intends to.

*DPD:* DPD is trying to provide opportunities to accommodate improved ecological function where it is compatible with water dependent uses. The setback would still allow water dependent activities that are necessary for access to the water such as access ways, repair areas, loading equipment, etc.

*DPD:* DPD's proposed buffer and setback are based on the Best Available Science document assembled for the 2006 Environmentally Critical Areas Ordinance, which DPD will provide to the Committee.

*Comment:* Using the 35' setback area for industrial water dependent uses within the US/UMX usually means that the area will be paved. Paving the area is not an ecological improvement and the building should be allowed to rest against the shoreline rather than be setback against pavement.

*DPD:* The state legislature is currently addressing how to handle buffer and setback requirements where the shoreline changes so that property owners who create coves as part of restoration projects are not penalized for doing so. This bill is HB 2199.

*DPD:* "Major public access occupying 1/3 of a site" refers to 1/3 of the dry land portion of the site.

*Concern:* Requiring vegetated buffers next to the shoreline as an environmental benefit would result in a substantial change from the existing situation. When accessing the shoreline, most people want to be right on the bulkhead, not 15' away from it.

*Comment:* There is always tension between a habitat restoration buffer and public access. They can be compatible, but the language/development standards needs to be written to reduce conflict between the two

*Comment:* Vegetated buffers are usually the first places to get trashed, since they are not regularly

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maintained by the City.

*Comment:* The City should set aside money for protecting and restoring large sites in rural areas, rather than restoring expensive little patches of shoreline in an urban area that has already lost ecological function.

*Concern:* DPD's proposed changes will make many existing conforming structures non-conforming. This will create problems down the line.

*Comment:* DPD needs to provide more clarity as to what is water dependent, what is water related, where you can really do ecological improvement, and what it means for a water dependent use to try to be improve ecological function.

*Concern:* DPD needs to think about the cost and burden put on the property owner as they replace their existing buildings or property for a marginal gain. The cost/benefit needs to be looked at closely this heavily-built environment.

### **Public Comment**

Erik Lagerberg, a homeowner within the US/UMX environment, worries about the cost of developing his property and the uncertainty around what he sees as subjectivity in DPD's proposals. Erik said most of the sites within the US/UMX zone are non-conforming and/or small. DPD's proposals seem to treat these sites as an anomaly, when they are the norm.

### **Committee Work Plan/Report**

After discussion, the Committee agreed to move its final meeting from Tuesday, May 20<sup>th</sup> to Tuesday, June 2<sup>nd</sup>, to allow more time for Dave Robison of Cascadia Community Planning Services to develop a draft Committee report, and for the Committee to review it via email. The Committee also agreed to request that Committee members John Owen and Mark Johnson assist Dave with the first draft of the report, to the degree that their schedules allow. Mark and John's task will be to offer their experience and expertise in the SMP process, and to help describe areas of consensus and areas where opinions differ. They will not make decisions, or state their own opinions. Michael also reported that the Committee's January discussion on shoreline permitting is being provided to the project manager for the City's Master User Permit (MUP) improvement process.

Maggie Glowacki of DPD reported that policy and response papers for the SMP elements the Committee addressed through November 2008 will be sent to the Committee within one week of the February meeting. DPD is requesting that Committee members look over each paper and email to DPD a list of any issues relating to these elements they feel the Committee has not fully addressed and/or would benefit from further discussion. The March meeting agenda will be built around these issues. Michael said that Committee members are being asked to focus on issues previously un-vetted by the Committee and/or where further discussion would be productive, rather than issues that, while of importance to Committee members, have already been fully discussed by the Committee and would

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likely lead to a rehashing of the previous discussion.

Maggie reported to the Committee on her communications with Committee members between the January and February CAC meetings. She said DPD has met with the Floating Homes Association, to speak about the issue of overwater coverage and that DPD will develop a policy paper on floating homes for the Committee to review. She also said DPD attended a meeting of the North Seattle Industrial Association (NSIA), to discuss public access proposals in response to a memo written by Committee member Jim Ferguson. Jim will be revising his memo based on that discussion and providing it to the full Committee. DPD also went on a walking tour with Committee member Jack McCullough, to look at and discuss non-conforming structures around Lake Union, and DPD will be meeting with Margie Freeman and other Lake Union Association members to discuss the US/UMX environment. Maggie concluded by reminding the Committee that anyone is welcome to contact DPD with questions, comments, or a request for a call or meeting. Maggie will continue to report back to the Committee on such meetings.

### **Non-Conforming Structures and Uses**

Maggie provided an overview of non-conforming structures and uses (see the PowerPoint presentation and related handouts available from the Committee's website), explaining that there is no existing or proposed comprehensive plan or policy specifically referencing non-conforming uses and structures. She said that general policies relating to non-conforming structures and uses that will inform DPD's update include:

#### **Non-conforming structures**

- Allow maintenance of existing non-conforming structures where no expansion, redevelopment or replacement is proposed (no "sunset" provisions).
- Seek increasing conformity, particularly for overwater structures and structures in the setback, when replacement or substantial redevelopment occurs.
- Allow reasonable use of property in all cases.

#### **Non-conforming uses**

- Allow maintenance of existing non-conforming uses where no expansion, redevelopment or replacement is proposed (no "sunset" provisions).
- Allow replacement of non-conforming uses with other non-conforming uses on dry land outside of the structure setback, as long as this does not increase nonconformity.
- Do not allow replacement of non-conforming uses with other non-conforming uses on submerged land and/or within the structure setback.

Regulations include:

#### **Non-conforming structures**

- For structures landward of the ordinary high water mark (OHW) and outside of the habitat buffer, make non-conformity language consistent with Chapter 23 of the Seattle Municipal

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Code (redevelopment to same size and location allowed with no increase in non-conformity).

- For structures waterward of OHW or within the habitat buffer, allow maintenance, renovations, repairs or structural alterations only to the extent these actions do not constitute a substantial improvement and continue to prohibit expansion. “Substantial improvements” include:
  - a. Replacement of any habitable space.
  - b. Maintenance, renovations, repairs or alterations with a value of more than 40% of the value of the non-conforming portion of the structure in any five year period.
  - c. Extensive structural repair or alteration of creosote pilings excluding replacement with pilings of a different material.
- Allow “substantial improvements” to non-conforming buildings waterward of OHW or within setback as a conditional use only on properties with less than 50’ of dry land and only to the extent necessary to allow reasonable use of property.
  - a. Considering providing guidance for what constitutes “reasonable use;” for example “to accommodate an enclosed structure with footprint equal to X feet times the width of the lot, up to a maximum of X square feet” for each shoreline environment.

**Non-conforming uses**

- Prevent new non-conforming uses where a non-conforming use currently exists within buildings located over submerged land and/or in buffers.
- Allow additional flexibility to accommodate non-conforming uses in buildings designated as historic landmarks.

**Other Changes**

- Modify “act of nature” definition to make it more consistent with the land use code generally. Change from “destroyed by fire or other act of nature, including normal deterioration of structures constructed in or over the water” to “destroyed by fire, act of nature, or other causes beyond the control of the owner, excluding normal deterioration of structures constructed in or over the water.”
- Make period after which a use is considered to be discontinued 12 months, consistent with non-conforming use regulations in the Chapter 23 of the Seattle Municipal Code.

**Key questions that DPD provided for discussion included:**

- How can we seek additional conformity over time for structures, without precluding maintenance or reasonable use of property?
- Can we prioritize high impact situations such as structures that are overwater or in the structure setback?
- How should regulations address lots containing little dry land?
- Is the approach proposed by DPD and/or the Committee consistent with the Committee’s and community’s vision for Seattle’s shorelines?

**Committee member comments and concerns are identified as “*Comment*” or “*Concern*” while DPD clarifications are identified as “*DPD*”, below:**



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*DPD:* All creosote piles must eventually be replaced from existing piers as redevelopment occurs.

*Comment:* DPD should incentivize the removal of creosote piles by allowing the repair and replacement of a non-conforming structure if all piles are removed.

*Committee:* People who redevelop their use or structure should be required to come into conformity, but if one maintains what is currently there, and at the same time improves the ecological function, he or she should be able to keep it as is.

*Concern:* DPD is setting up a negative incentive for improving structures over the water, other than piers, by requiring conformity for existing non-conforming structures.

*Concern:* People will “limp along” when it comes to replacement under these proposals. Are we better off trying to move people into partial conformity by pulling pilings and/or creating public access/view corridors, or should we just watch these existing buildings sit unrenovated for another 100 years?

*Concern:* These proposals should be based on incentives and not be so prescriptive. Most people want to do the right thing without being penalized by having to have a smaller structure. There should be a more positive and proactive approach to these proposals that focuses on what the City wants to achieve, rather than just dictating what a shoreline property owner cannot do.

*Comment:* The cost of replacing pilings for big overwater structures is so high, it is only going to happen if there is enough economic value created in the use of the structure above. This won't happen for many of the existing buildings if they are limited to water dependent uses.

*DPD:* Structures exempt under the requirements of a substantial development permit will continue to be exempt. DPD is not changing the permitting process, just the requirements for it. If you have a non-conforming structure, you follow the non-conforming development standards, but you still go through the exemption permitting process.

*DPD:* If a proposed project overwater or in a setback exceeds the threshold of “substantial improvement,” then the project is required to meet the current development standards (i.e. come into conformity) unless there is insufficient dry land to accommodate reasonable use.

*DPD:* These proposals apply to overwater buildings; docks are handled separately, as discussed at a previous Committee meeting.

*DPD:* The Seattle Municipal Code defines the term non-conforming houseboat moorage which is different than a houseboat that is defined under non-conforming development standards. This term will be removed during the update to prevent confusion.

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*DPD:* The Department of Ecology's new Shoreline Master Program regulations (WAC 173-26) direct DPD to favor water dependent uses on waterfront sites, especially in Urban Maritime (UM) and Urban Industrial (UI) zones.

*DPD:* On dry land outside of a buffer, one could replace an existing non-conforming use with another non-conforming use.

*Concern:* DPD's proposals for this and other elements of the SMP update are incrementally leading to a situation where many current conforming shoreline uses will become non-conforming. This includes DPD's proposal to turn marinas on the Duwamish (a water dependent use) into non-conforming structures. DPD's proposals from October relating to allowable uses in the UM environment will mean that just about everything on dry land at Fisherman's Terminal will become non-conforming. Almost the entire US/UMX area will become non-conforming under these new proposals, because nothing there currently has vegetated buffers and many of the buildings are not 35' from the bulkheads.

*Concern:* Making these structures non-conforming makes it harder to maintain and replace them, and is counter-productive to other City initiatives to preserve industrial jobs. If DPD is not careful, there may be legal issues with these proposals.

*Comment:* Many of these structures are being grandfathered into the new code. Seattle has a built up shoreline. A lot is already being allowed under these proposals that wouldn't be allowed in a less built environment. Not providing setbacks and buffers could also lead to legal issues.

*Comment:* DPD should be applauded for proposals that steer away from hurting water dependent jobs, while still seeking to improve ecological function. It is the aggregate of all these structures that currently exist that may prevent salmon from being around for our grandchildren.

*Comment:* DPD should try to estimate the amount of non-conformity that exists today, and how much there would be under these proposals.

*DPD:* DPD will consider how much non-conformity would be created by these proposals. Issues regarding non-conforming structures and uses are complex and not easy to balance.

*Comment:* There are various uses that are not allowed under these proposals that are not strictly water dependent or water related, but still affect the maritime industry. The code should have flexibility to allow for these uses.

*DPD:* DPD recognizes that water related uses are necessary for water dependent uses to thrive.

*DPD:* DPD's task is to achieve the SMA's mandate for balance among water dependent uses on waterfront lots, public access, and ecological function of the shorelines. DPD is looking to the

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Committee to help it balance and achieve all three.

*Comment:* There should be creative avenues (similar to the design review process) that allow departures from strict code definitions, in order to accomplish clearly laid out policy objectives.

*Comment:* It is critical to keep water dependent businesses on the water. At the same time, we have to increase ecological function. Fisherman's Terminal also needs to be protected as a historic district.

*Comment:* DPD should exclude sea-level rise from "acts of nature" that allow one to replace a non-conforming use.

*Comment:* DPD has done a great job at trying to get back environmental integrity in this trashed environment.

### **Public Comment**

Erick Lagerberg said that many shoreline residents care a lot about the environment and are good stewards who do not want to have an adverse incentive and challenges to development that go around the spirit of what the Committee and DPD are trying to accomplish.

### **Final Thoughts/Next Steps**

Michael wrapped up the meeting, indicating that a meeting summary will be sent for review and approval by the Committee and DPD. The prior meeting summary and all materials from this meeting will be posted to the web. Materials for the March meeting will be provided within one week of the February meeting. Michael encouraged Committee members to contact him and/or DPD with any questions, comments, etc. Michael thanked members for their participation and adjourned the meeting. The next meeting will be held on Tuesday, March 24<sup>th</sup>, 2009 from 5:30 PM (5:00 PM "meet and greet") to 9:00 PM.